

U.S. Department
of Transportation

**United States
Coast Guard**



Commander
Eighth Coast Guard District
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16450
D8 (m) Policy Ltr 14-2000
7 December 2000

From: Commander, Eighth Coast Guard District
To: Distribution

Subj: METHANOL LIGHTERING APPROVAL AND CERCLA RESPONSE AUTHORITY

1. Enclosures (1) and (2) are forwarded for your information and use. Enclosure (1) authorizes a long-term methanol lightering operation offshore Galveston, Texas. Enclosure (2) forwards a legal analysis by Commandant (G-LMI) regarding the seaward extent of the Coast Guard's CERCLA response authority. This analysis is particularly valuable and should be retained for future reference. Should you have any questions, please contact Lieutenant Commander Bill Daughdrill of my staff at (504) 589-6193.


G. D. MARSH
By direction

Encl: (1) COMDT (G-MOC-2) ltr 16450 to Robin Maritime Agencies of 10 October 2000
(2) COMDT (G-MOC-2) rapid draft ltr to CCGD8 of 10 October 2000

Dist: All Eighth District MSOs, MSDs and MSU

Copy w/o encls: Commandant (G-MOC), (G-LMI)



16450

OCT 10 2000

Mr. Mark Potter
Vice President
Robin Maritime Agencies, LLC
14950 Heathrow Forest Pkwy, Ste 270
Houston, TX 77032

Dear Mr. Potter:

This is in reply to your request to conduct hazardous material cargo lightering operations in the Gulf of Mexico, as detailed in your letters of April 26 and July 12, 2000 addressed to Coast Guard Marine Safety Unit Galveston and the Eighth Coast Guard District respectively. Approval is hereby granted for the *M/V MILLENIUM EXPLORER* (L9205873) to lighter Methanol (Methyl Alcohol), subject to the following conditions:

- a. Offshore cargo lightering operations shall be conducted at the "Galveston Lightering Area" (28.35N – 94.15W) or the "Freeport Lightering Area" (28.30N – 95.05W), in accordance with applicable laws, regulations and local restrictions as may be implemented and enforced by the Captain of the Port Houston-Galveston and/or Eighth Coast Guard District Commander. Additionally, the following requirements apply:
 1. Lightering operations shall be conducted in accordance with Title 33 Code of Federal Regulations Parts 155 and 156 (33 CFR 155-156);
 2. Lightering operations shall be conducted consistent with, and to the maximum extent practicable, the Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide (Petroleum) Third Edition 1997; and,
 3. Prior to conducting lightering operations, *M/V MILLENIUM EXPLORER* firefighting and environmental response emergency procedures shall be addressed to the satisfaction of the Captain of the Port.
- b. The *M/V MILLENIUM EXPLORER* shall be equipped with an infrared detector/camera to identify the source of a methanol fire.

Approval is granted, based on the expectation that lightering operations are covered by and in accordance with the vessel's Safety Management System and otherwise will be performed in accordance with the manner as detailed by your letters of April 26 and July 12, 2000. This approval is also based on the expectation that recovery of cargo vapors will not be conducted during the lightering operations. You must notify the Captain of the Port if any of the foregoing expectations will not be met so that the USCG may determine what additional evaluation must be made.

Enclosure (1)

Subject to the conditions set forth above, the *M/V MILLENIUM EXPLORER* is granted permanent approval to lighter Methanol at the Galveston Lightering Area and Freeport Lightering Area. The Eighth Coast Guard District Chief Marine Safety, and/or the Captain of the Port Galveston are hereby authorized to permanently revoke this approval without further consultation of this office.

Sincerely,

A handwritten signature in black ink, appearing to read "B. G. Basel". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

B. G. BASEL

Captain, U.S. Coast Guard

By direction of the Commandant

Copy: CCGD8(m)
CG MSO Houston-Galveston
CG MSU Galveston

RAPIDRAFT LETTER

MAY BE TYPED
OR
HANDWRITTEN

INSTRUCTIONS

ORIGINATOR – Use for routine correspondence not requiring action, review, or comment by officers in the chain of command.

ADDRESSEE – Reply on here, returning original to originator. Keep file copy for your files.

TO:

• Commander, Eighth Coast Guard District •
Hale Boggs Federal Bldg., Rm. 1328
501 Magazine Street
New Orleans, LA 70130-3396
• •

STAFF SYMBOL/SSIC/PHONE

(G-MOC-2)
16450
(202)-267-0499

DATE

OCT 10 2000

Subj: M/V MILLENIUM EXPLORER; METHANOL LIGHTERING

1. In reply to issues raised by MSU Galveston, regarding the applicability of CERCLA authority to the subject operations, the enclosed (G-LMI) memo is forwarded for your information.
2. Should you have any questions, please contact LCDR Russ Proctor of my staff at the above telephone number.

L. L. FAGAN

Encl: G-LMI (Wasserman) memo dtd 31Jul00

Copy: CG MSO Houston-Galveston
CG MSU Galveston

FROM:

• USCG Headquarters (G-MOC-2) •
Foreign & Offshore Compliance Division
2100 Second Street S.W.
Washington, DC 20593-0001
• •

DO NOT USE
FOR
CLASSIFIED CORRESPONDENCE

31 July 2000

From: Paul Wasserman

To: CDR Steven Wischmann, LCDR Linda Fagan

Subj: Jurisdictional Range of Federal Response Authority under CERCLA

1. Last week, I received an e-mail from you advising that a chemical tanker carrying a CERCLA hazardous substance is expected to arrive in waters of the United States for the purpose of lightering¹ its cargo to smaller vessels for delivery to ports within the U.S. I understand that the vessel is to commence lightering operations approximately 26 miles off shore. As I understand your question, should a spill or discharge occur, the concern is whether our federal response authority under CERCLA extends out to 26 miles.
2. For the reasons that follow, this memo concludes that federal response authority under CERCLA extends, at a minimum, to the 200 mile Fishery Conservation Zone created by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), which is coextensive with the Exclusive Economic Zone of the United States.
3. Section 104 of CERCLA controls federal response authority. That section provides:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time . . . or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment.

4. In light of the non-specific language above, to determine the jurisdictional extent of CERCLA's response authority, we must look at the definition of the word "environment" found in section 104, quoted above. The word is defined at section 9601(8), and reads as follows:

¹ Since the question of compliance with the "lightering statute," 46 U.S.C. §3715, has not been raised, this paper presumes that the requirements of that statute have been met to authorize the lightering of the hazardous substance in the first instance.

ENCLOSURE(1)

The term "environment" means (A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.], and (B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States."

5. The term "navigable waters" is, in turn, defined at 9601(15) to mean "the waters of the United States, including the territorial sea." The terms "territorial sea" and "contiguous zone" are defined at §9601(30) by referring to the definitions contained in §1362 of Title 33, United States Code. Turning to that section, we find that the term "territorial sea" means:

[T]he belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of **three miles**. (Emphasis supplied.)

The term "contiguous zone" is defined to mean:

[T]he entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

6. The Convention on the Territorial Sea and the Contiguous Zone, 15 UST 1606, TIAS 5639, 516 UNTS 205, entered into force on September 10, 1964. The US is a signatory country. Article 24(2) of that Convention states:

[T]he contiguous zone may not extend beyond **12 miles** from the baseline from which the breadth of the territorial sea is measured.² (Emphasis supplied.)

² It is interesting to note that while the Convention on the Territorial Sea and the Contiguous Zone limits the extent of the contiguous zone to 12 miles, the Law of the Sea Convention extends the contiguous zone to 24 miles. We are nevertheless limited in this case to 12 miles because Congress specifically identified the Convention to use in defining this term. Moreover, the U.S. is not signatory to the Law of the Sea Convention. However, in the United States Ocean Policy Statement by the President of 10 March 1983 accompanying Proclamation 5030 on the Exclusive Economic Zone of the United States of America, the President stated, among other things:

... the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans - such as navigation and overflight. In this respect, the United States will recognize the rights of other states in the waters off their coasts, as reflected in the Convention [LOSC], so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states.

7. Finally, to complete our review of the definition of the term "environment" to establish the geographic boundaries of federal response authority under CERCLA, we must explore the meaning of the words "ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]." This Act establishes a "fishery conservation zone" at §1811 and establishes an exclusive federal fishery management authority over a very broad and varied geographic range at §1812. It is these two sections that Congress must have been referring to in its definition of "environment." Section 1811 states:

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is **200 nautical miles** from the baseline from which the territorial sea is measured. (Emphasis supplied.)

Section 1812 states:

The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

- (1) All fish within the fishery conservation zone
 - (2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.
 - (3) All Continental Shelf fishery resources beyond the fishery conservation zone.
8. Based upon the foregoing, it appears that the geographical scope of federal response authority under CERCLA is enormous. Under this statute there exists jurisdiction over a 3 mile territorial sea, a twelve mile contiguous zone, a 200 mile fishery conservation zone, an indeterminate area of water in which Continental Shelf fishery resources may be found outside 200 miles and, lastly, an indeterminate area of jurisdiction over all those waters in which
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anadromous species migrate, bounded only to the extent that such fish may travel into a foreign nation's territorial sea or fishery conservation zone. Clearly, for the purposes of conducting a federal response to a discharge of a hazardous substance during a lightering activity occurring approximately 26 miles off our shores, CERCLA provides more than adequate authority. It should be borne in mind, however, that while response authority under CERCLA is very expansive, that authority must be exercised consistently with the National Contingency Plan.

9. If I can be of further assistance in this matter please give me a call.